In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-560

JOHN LEDES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a plea of *nolo contendere* in the United States District Court for the District of Columbia, petitioner was convicted of conspiracy to defraud the United States, in violation of 18 U.S.C. 371, and sentenced to a suspended prison term of one to four years. The court of appeals affirmed *per curiam* (Pet. App. C).

The rather complex procedural history of this case is as follows: On January 18, 1961, petitioner and two co-defendants (Gordon and Abrams) were indicted for conspiracy to defraud the United States concern-

ing its right (a) to have the business of the Securities and Exchange Commission administered free from self-interest and improper influence and (b) to impartial and conscientious actions by petitioner as an employee of the Commission. It was alleged that, as part of the conspiracy, he rendered improper assistance to Abrams, who was under investigation by the Commission in regard to matters of a certain corporation pending before it. Trial began on January 8, 1962, and ended in a mistrial the next day (see Pet. pp. 4, 10-11). A new jury was immediately empaneled and a second trial begun which ended with a verdict of guilty on February 1, 1962. The court of appeals reversed the conviction on January 2, 1964 because of the admission of prejudicial evidence. *Abrams* v. *United States*, 327 F.2d 898.

After the reversal (the mandate issued March 26, 1964), retrial was initially set for November 30, 1964. This eight-month period was occasioned by the poor health of co-defendant Gordon. In October 1964, all three defendants, including petitioner, filed with the trial court letters of consent to further continuance of the case. Thereafter upon application of petitioner's attorney, Edward L. Carey, the district judge ordered further continuance of the case until March 8, 1965. Shortly before this new trial date, Abrams requested another continuance because of his involvement in an appeal and other litigation in the Second Circuit. The trial was rescheduled for May 10, 1965. Abrams' prolonged involvement in these other legal matters necessitated another continuance to October 18, 1965. The district judge noted in a memorandum at that time

that petitioner had no objection to this later date. Subsequently, Abrams' legal difficulties in New York and Gordon's poor health caused the district judge to postpone the trial, the final date selected being May 2, 1966. The judge again noted in a memorandum that petitioner did not oppose the further continuance.

On April 26, 1966, co-defendant Abrams pleaded guilty. In order to enable counsel to readjust the defense to this new development, the trial date was moved forward one week to May 9, 1966. On this date co-defendant Gordon's counsel informed the court that the mother of Edward Carey, petitioner's counsel, had died the previous night in Pennsylvania. Additionally, the United States Public Health Service, by letter dated May 2, 1966, addressed to the judge, advised that it would be necessary that co-defendant Gordon undergo a further medical examination prior to trial in view of the fact that his last examination had been five months before. For these reasons the matter was put over until October 24, 1966.

One week before the scheduled trial date, Mr. Carey, petitioner's counsel, announced that he had accepted a position as general counsel for the United Mine Workers and intended to give up his District of Columbia practice. He sought leave to withdraw as petitioner's counsel but the court continued the matter for two weeks to see what alternative arrangements petitioner could make. After petitioner secured new counsel, the district judge on October 31, 1966, excused Mr. Carey and postponed the trial until January 16, 1967.

Several days into the new year it became evident that Gordon's counsel would be occupied in a lengthy trial

in another matter involving numerous defendants and attorneys during the time when the Ledes-Gordon trial was due to take place. Accordingly, the district judge ordered that the trial in the instant case not commence on January 16th and that counsel meet with him in pre-trial conference on January 20, 1967, to attempt to agree upon a definite trial date. At this conference both government and defense attorneys acknowledged having commitments which would militate against setting a definite date at the time. Accordingly, it was agreed that the case be removed from the ready calendar until such time as all parties could agree upon a date.

At about the same time, petitioner indicated his intention to employ discovery and inspection procedures. A motion to this effect was filed on April 4, 1967. This motion brought about further litigation and several hearings before two district judges as to how the various voluminous materials requested by petitioner were to be made available for photocopying, who was to pay for copying, etc. During this period, co-defendant Gordon pleaded *nolo contendere* and dropped out of the case. Finally, after having been supplied with the necessary documents, petitioner pleaded *nolo contendere* in March 1968.

Petitioner contends that his retrial after the initial mistrial in 1962 was barred by the Double Jeopardy Clause and that the four-year interval between his first reversed conviction and his plea of *nolo contendere* violated his right to a speedy trial.

As to the double jeopardy claim, the trial judge at the original trial had ruled that when any motion was

made he would regard it as having been made for all defendants (Tr. 4, 9-10). Thus, when counsel for Abrams and Gordon moved for a mistrial after the prosecutor had read a statement in petitioner's grand jury testimony which implied that Abrams was a convicted felon (see Pet. 10-12), the judge properly viewed petitioner as participating in the decision to seek a new trial, thereby waiving his double jeopardy defense. See *United States* v. *Jorn*, 400 U.S. 470, 485; *United States* v. *Tateo*, 377 U.S. 463, 467. Moreover, the double jeopardy issue was presented to the court of appeals following petitioner's first conviction and that court, although reversing the conviction on other grounds, rejected the double jeopardy contention. 327 F. 2d at 899.

The speedy trial contention is equally without merit. A substantial portion of the delay was acquiesced in by petitioner or was at his behest. Moreover, it is well settled that a plea of *nolo contendere* apart from its collateral consequences, is the legal equivalent of a guilty plea and waives all non-jurisdictional defenses. See *Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, 412; *United States* v. *Norris*, 281 U.S. 619, 622. The transcript of the plea [1] shows that petitioner, himself a lawyer and represented by counsel of his choice, entered it with full knowledge and understanding of the consequences. Indeed under specific questioning by the judge, petitioner acknowledged his awareness that by entering the plea he was knowingly waiving his right to a speedy trial. See *United States*

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[1] We are lodging the three-page transcript of the plea herewith.

v. *Doyle*, 348 F. 2d 715, 718 (C.A. 2), certiorari denied, 382 U.S. 843. Moreover, there is a substantial body of case law which holds that the plea itself waives the right to a speedy trial. *United States* v. *Grayson*, 416 F. 2d 1073, 1077 (C.A. 5), certiorari denied, 396 U.S. 1059; see also *Fowler* v. *United States*, 391 F. 2d 276 (C.A. 5); *Becker* v. *Nebraska*, 435 F. 2d 157 (C.A. 8); *United States* v. *Doyle*, *supra*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

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